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ALEXANDER L. STEVAS,
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NO. 84-350

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

Independent School District No. 196, Rosemount-Apple Valley, Minnesota, et al.,

Petitioners,

vs.

Lynne E. Cybyske,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

PETITIONERS' REPLY BRIEF

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TABLE OF AUTHORITIES

Cases: Page

Cybyske v. Independent School District No. 196, 347 N.W.2d 256 (Minn. 1984) 3,4

REASONS FOR GRANTING THE PETITION

Although the reasons which Petitioners believe warrant the granting of a writ are adequately stated in the Petition for a Writ of Certiorari, Petitioners believe a brief reply is necessary to correct and comment upon the assertions contained in the Brief in Opposition filed by Respondent.

Respondent alleges that this Court should deny the petition because the questions presented are merely hypothetical and require the rendering of an impermissible advisory opinion (Res. Br. at 2). Petitioners disagree.

Were it true that the issue is whether Lynne Cybyske "may prevail if she can establish that the decision of the public employer not to hire her was made because of her exercise of consti-

tutionally protected rights and freedoms . . ." (Res. Br. at 2; Pet. App. at A-22) (emphasis added), Petitioners might agree that this matter is not subject to review.

Respondent's reading of the Minnesota Supreme Court's decision is transparent, placing form over substance. The language of that court's decision is plain; its ratio decidendi is based exclusively upon the alleged exercise of associational freedoms by Cybyske's non-party spouse which the court imputes to Cybyske as the exercise of hers. It is Daniel Cybyske's membership and known opinions as a member of a neighboring school board, not Respondent's, which concerned the Minnesota Supreme Court (Pet. App. at

A-26). The Minnesota Supreme Court specifically stated:

> Where the public employer discriminates against the job applicant because the employer dislikes the activities of the applicant's spouse, particularly where that spouse is only exercising his or her first amendment rights . . ., it would seem that the job applicant's associational freedoms have been impaired.

Pet. App. at A-26-27; 347 N.W.2d at 262 (Minn. 1984) (emphasis added).

The questions presented by Petitioners specifically address and challenge this ratio decidendi on the basis of standing and unwarranted expansion of the associational freedom as interpreted in previous decisions by this Court.

Incredibly, the Minnesota Supreme Court, in rejecting Respondent's argu-

ment that the "political status" of her spouse is protected under the Minnesota Human Rights Act, stated that to:

> adopt plaintiff's argument would mean that any employer bias or predilection towards a spouse which is imputed to the employee, whether of substance or not, would subject the employer to a lawsuit. We do not think the legislature had this in mind.

Pet. App. at A-18; 347 N.W.2d at 261.

Using the same rationale, however, the Minnesota Supreme Court decided that Lynne Cybyske has stated a constitutional cause of action. Petitioners respectfully submit that the framers of the Constitution, even more than the Legislature of the State of Minnesota, did not have this in mind. The decision of the Minnesota Supreme Court is simply wrong on matters of federal constitu-

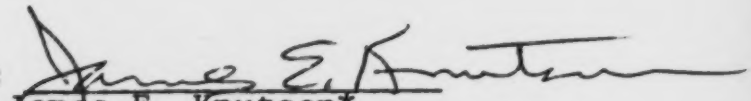
tional importance and should be reversed.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the Petition for a Writ of Certiorari, Petitioners request that the Petition be granted.

October 3, 1984

Respectfully submitted,

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